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Statement of Chairman Daniel K. Akaka
"S. 372 – The Whistleblower Protection Enhancement Act of 2009"
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Senate Committee on Homeland Security and Governmental Affairs

June 11, 2009

Today's hearing will examine S. 372, the Whistleblower Protection Enhancement Act of 2009, which I and other Members introduced earlier this year. First, I would like to thank Senator Collins, the lead Republican cosponsor of S. 372, and members of the Homeland Security and Governmental Affairs Committee who are cosponsors, including my good friend Senator Voinovich, a champion of federal employees, and Chairman Lieberman, for their support. I want to mention that Senators Collins and Voinovich are not able to attend today's hearing due to last-minute scheduling conflicts, but I know they very much wanted to be here. I would also like to recognize Senators Grassley and Levin, who have been long-time supporters of strengthening whistleblowers protections.

The Whistleblower Protection Act (WPA) is an important cornerstone of our Nation's good government laws. Federal employee whistleblowers play a crucial role in alerting Congress and the public to government wrongdoing and mismanagement, protecting our civil rights and civil liberties, helping to keep us safe, and rooting out waste, fraud, and abuse.

Congress passed the Whistleblower Protection Act of 1989, and amendments to improve the WPA in 1994, to strengthen protections for federal employee whistleblowers. However, a series of rulings by the Merit Systems Protection Board (MSPB) and the Federal Circuit Court of Appeals have created a number of loopholes in the law's protections. The law has become so weak that many employees, with good reason, fear they will not be protected from retaliation if they come forward to report wrongdoing.

In 2000, I first introduced a bill to strengthen the WPA with Senator Levin. Over the years, the consensus that action is needed has grown broader, and the commitment of those involved has grown deeper. Each Congress, we have moved closer to enacting stronger whistleblower protections.

Last year, our bill passed the Senate by unanimous consent. The House passed a similar bill, H.R. 985. Unfortunately, we were not able to work out the differences between the bills before the 110th Congress adjourned.

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It is very encouraging to be working with an Administration this year that is engaged in trying to work through the details of the legislation. President Obama has stated that his "Administration is committed to creating an unprecedented level of openness in government." I know this Administration is deeply committed to transparency and accountability, and I believe that by working together we will enact stronger whistleblower protections, which is so important to those larger goals.

There is broad agreement on a number of provisions that are in both S. 372 and the House companion bill, H.R. 1507. These include the need to:

- clarify that any whistleblower disclosure, truly means any disclosure;
- provide a process to review retaliatory security clearance revocations and suspensions;
- provide whistleblower protections to employees of the Transportation Security Administration;
- protect disclosures of scientific censorship;
- suspend the federal circuit court's exclusive jurisdiction; and
- make a number of other important changes.

However, there remain a few unresolved issues, and this hearing will focus largely on grappling with those issues.

The first is how to best protect national security whistleblowers. For too long, national security whistleblowers have not had secure avenues to disclose government waste, fraud, abuse, and mismanagement. Some undoubtedly have stayed quiet, while some have leaked classified information to the media. We must ensure that there are secure channels to bring problems in the Federal government to Congress's attention. Congress, with the appropriate security clearance requirements and procedures for safeguarding information, must be able to fulfill its constitutional oversight responsibilities. I hope today we will have a productive discussion on ways to address this important issue.

The other unresolved issue is whether a safety valve is needed to protect whistleblowers if the administrative process is not working. The House companion bill would allow whistleblowers to file their cases in district court if the MSPB has not acted within 180 days. Many whistleblower advocates believe that this is a needed check to ensure that our efforts to strengthen whistleblower protections are not gradually undone, as they have been in the past. On the other hand, management groups and the past administration have expressed concerns that fear of having to defend their actions to a jury might dissuade federal managers from disciplining problem employees. Additionally, the past administration was concerned that this would allow forum shopping – employees dissatisfied with the direction of their MSPB proceedings could move into district court after 180 days.

I hope to address these two issues in some depth today and explore the effects different approaches would have on the protections for federal employee whistleblowers, on federal agencies, on congressional oversight, and on national security.

Whistleblowers make government more efficient and effective by disclosing waste, fraud, abuse, and illegal activity. As a long-time proponent of improving government performance through sound management practices and accountability, I am confident we will succeed in enacting legislation this year that will enhance the system of whistleblower protections.
I look forward to hearing from our witnesses today.

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